IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 566/2000
(The Union of India & Anr. Vs. The Municipal Board, Barmer & Ors.)

Date of Order : 14/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S.S.Purohit for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
None present for the non-petitioner Municipal Board, Barmer.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 10.8.2000 passed by Sub-Divisional Magistrate, Barmer (for short 'the Executive Magistrate' hereinafter) whereby on an application filed by non-petitioner Municipal Board, Barmer, the proceedings under Section 133 Cr.P.C. were initiated and the petitioners were directed to remove the six quarters belonging to the Railway.

Heard learned counsel for the petitioners and public prosecutor for the State. Carefully gone through the order impugned as also the material available on record.

It appears from the order impugned that the Municipal Board non-petitioner, came with a case that the

Railway has obstructed the public way by constructing as many as six quarters for their employees. From the record, it also appears that the alleged six quarters belong to the Railways and had not been constructed in the recent past but old enough as also the said quarters have been constructed on the land belonging to the Railways. There had been a meeting of the employees of the Municipal Board as well as the Railways, vide Ex.Annex.7 on 5.8.2000, wherein it has been admitted by Municipal Board that the quarters constructed by the Railways are on the land belonging to the Railways and the Municipal Board in order to widen the public road would assess the cost of those quarters and pay the same to the Railways or in lieu a land will be provided to the Railways. This clearly goes to show that the land on which the quarters are said to have been constructed by the Railways for their employee, are not on the public way, but on the land belonging to it. A writ petition has been filed by the petitioner before this Court being S.B.Civil Writ Petition No. 1151/04. By order dated 15.3.2004 while issue notice in the said writ petition, this Court noticed that since the dispute is between the Union of India and Municipal Board, Barmer in respect of some land belonging to the Railways which is admittedly taken by the Municipal Board, Barmer prima-facie without authority of law. This clearly goes to show that the land on which the quarters for the employees of Railways have been constructed,

are old enough and have not been constructed on public way and therefore, the proceeding under Section 133 Cr.P.C. against the present petitioners for that land is not maintainable and as such in my view, the Executive Magistrate fell in error in initiating the proceeding under Section 133 Cr.P.C. against the petitioners and issuing a notice vide order impugned.

In the result, the petition is allowed. The order impugned dated 10.8.2000 and the proceeding before the Executive Magistrate under Section 133 Cr.P.C. stand quashed. The file of writ petition be detached.

(H.R.PANWAR),J.

rp